

Highly Tested Subjects on the MEE

Multistate Essay Exam Frequency Chart

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	J'11	F'12	J'12	F'13	J'13	F'14	J'14	F'15	J'15	F'16	J'16	F'17	J'17	F'18	J'18	F'19	J'19	F'20	J'20	S'20	O'20	F'21	J'21	F'22	J'22	F'23	J'23	F'24	J'24
Agency & Partnership	X	X		X	(X)	X		(X)	X	X	X	X	X	X	X	X	X	X	(X)	X	X	X	X	(X)	(X)	(X)	(X)	X	
Corporations and LLCs	X	X		X		X	X	X	X	X	X	X	X	X	X	X	X	X	(X)	(X)			(X)	X	(X)	(X)	(X)	X	
Civil Procedure	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	(X)	X				X	X	X	X	X	X	X	
Conflict of Laws		(X)	(X)									(X)	(X)				(X)						(X)						
Constitutional Law				X		X		X		X		X		X		(X)		(X)	X	X								X	
Contracts		X		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Criminal Law			X					X				X		X		X		(X)	X		X		X						
Criminal Procedure	X					X	X			(X)	(X)					X							X			X	X	X	
Decedents' Estates (Wills)	X	X		X				X	X			(X)				(X)		(X)	X	X	X	X	X	(X)	X	X	X		
Evidence				X	X		X		X	(X)	(X)	X				(X)	X	X	X	X				X	X	X	X		
Family Law			X				X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X						
Real Property	X	X		X				X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Torts			X	(X)		(X)	X	X	X	X	X	X	X	X	X	X							X				X		
Trusts & Future Interests	X					X		X		X	(X)	X	X	X	X	X	X	(X)	X	X	X	X	X	(X)	X	X	X		
Secured Transactions			X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Negotiable Instruments	X			X																									

X = one full question on subject

(X) = subject tested with another subject

Tier One

- Civil Procedure (21 full essays plus 1 combined with another subject)
- Agency and Partnership (13 full essays plus 5 combined with another subject)
- Contracts (17 full essays)
- Secured Transactions (14 full essays)
- Real Property (15 full essays)
- Corporations and LLCs (11 full essays plus 5 combined with another subject)
- Evidence (11 full essays plus 3 combined with another subject)

Tier Two

- Trusts and Future Interests (10 full essays plus 3 combined with another subject)
- Decedents' Estates (Wills) (10 full essays plus 4 combined with another subject)
- Constitutional Law (9 full essays plus 2 combined with another subject)
- Torts (8 full essays plus 3 combined with another subject)
- Family Law (10 full essays)

Tier Three

- Criminal Procedure (8 full essays plus 2 combined with another subject)
- Criminal Law (6 full essays plus 1 combined with another subject)

- Conflict of Laws (This is usually combined with Decedents' Estates, Family Law, Civil Procedure, or Corporations/LLCs. It is not tested on its own.) (0 full essays, 6 essays combined with another subject)

Agency

I. The nature of an agency relationship

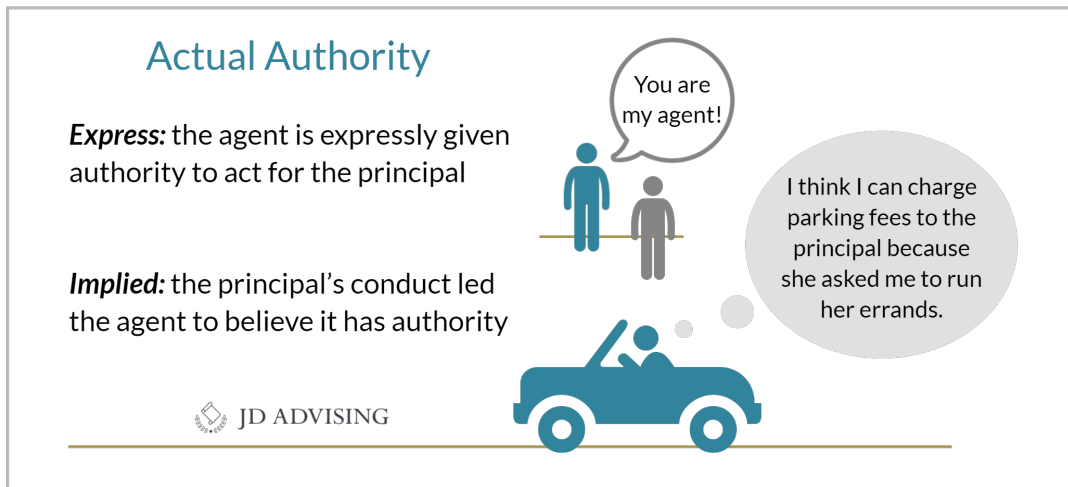
- 1) What is needed to create a principal-agency relationship? (July 2022, Sept 2020, Feb 2015, Feb 2006, Feb 1996)
 - a) **Consent** by both the principal and agent that the agent will act for the principal's benefit.
 - b) The agent is subject to the principal's **control**.
- 2) Note: no writing nor consideration is needed for a principal-agency relationship.



II. Types of authority

- 1) **There are three types of authority you should be aware of. The principal is bound if any of them exist:**
 - a) **Actual authority** (July 2022, Feb 2022, Feb 2020, Feb 2017, Feb 2016, Feb 2009, July 2007, Feb 2005, July 2003, July 2002, July 2001, Feb 1997, Feb 1996)
 - i) **Express:** the agent is expressly given authority to act for the principal.
 - (1) *Ex.: An agent was told that he could enter into a contract with a company for "not more than \$5,000." The agent then entered into the contract with the company for \$4,000. The principal is bound on the contract because the agent had actual authority to enter into it. (Feb 2009)*

- (2) This authority terminates by an act of the principal or death/incapacity of the principal.
- ii) **Implied:** Implied means that the principal's conduct led the agent to believe it has authority. This can be by custom, past course of conduct by the principal, or if there is a necessity or emergency circumstance.
- (1) *Ex.: If the principal says, "Go buy a book of stamps at the post office," the agent has implied authority to drive to the post office and pay for parking to buy the stamps.*



- b) **Apparent authority** (July 2022, Feb 2022, Feb 2020, Feb 2017, Feb 2016, July 2013, Feb 2013, Feb 2009, July 2007, July 2006, Feb 2005, Feb 2004, July 2003, July 2002, July 2001, July 1997, Feb 1997, July 1996)
- i) There are two elements:
- (a) the person dealing with the agent must do so with a **reasonable belief in the agent's authority**, and
 - (b) the belief must be generated by some act or neglect on the part of the **principal**.
 - (i) *Ex.: A principal was at a trade show and told everyone that the agent would be purchasing recipes but didn't state a limit to the amount of the contract that the agent was permitted to enter into. The principal privately told the agent that he could enter into a contract with a company for "not more than \$5,000." The agent then entered into a contract for a recipe for \$6,000. The principal is bound on the contract because, even though the agent did not have actual authority, the agent had apparent authority. (Feb 2009)*

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Apparent Authority

An agent has apparent authority when:

- The person *reasonably believes in the agent's authority*

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- The *principal's* act or neglect generated the belief.

The diagram shows a Principal (blue figure) on the left and a Person dealing with agent (grey figures) on the right. A speech bubble from the Principal says "I'd like to introduce you to Steve." A thought bubble from the Person dealing with agent says "I believe Steve is the principal's agent." The Principal is labeled "Principal" and the Person dealing with agent is labeled "Person dealing with agent".

MEE note: Actual and apparent authority are heavily tested and commonly combined with Partnership questions. Remember that partners have actual and apparent authority to bind the partnership in ordinary affairs.

c) **Ratification (July 2022, Feb 2022, Feb 2017, Feb 2013)**

- i) Even if the agent does not have any authority to enter into a transaction, the principal can *ratify* the acts (and thus become liable) by expressly or impliedly **affirming or accepting** the benefit of the act so long as he **knew** the material facts and had the **capacity**.

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Ratification

The principal is liable, even if the agent lacked authority:

- If the principal **knew** the material facts and had the **capacity** to ratify a transaction

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- The principal **affirms or accepts** the benefit of the transaction.

III. Liability of a principal for torts committed by an agent

1) **There are two ways for a principal to be liable:**

- a) **Vicarious liability of an employee (*respondeat superior*) (Feb 2021, Feb 2020, Feb 2015, July 2013, Feb 2006, Feb 2003)**



- i) The employer is liable in tort if the employee (mnemonic = **SMI**):

- (1) was acting in the **scope of employment** (e.g., doing the job he was hired to do), **(Feb 2006, Feb 2003)** or
- Ex.: If an employee of a pizza company is supposed to deliver pizza and hits a pedestrian, the employer will be liable for that tort.*
 - Principals can be vicariously liable for torts of non-employees if the non-employee acts with apparent authority and the third party relies on the appearance of agency. **(Feb 2021)**
 - Ex.: A store owner is vicariously liable for her independent contractor's negligence because she called a customer and told her to be on the lookout for her driver with the store's sign on the side of the truck. The driver negligently hit the customer. The store owner is liable because the driver was acting with apparent authority and the customer relied upon it. (Feb 2020)*
- (2) **made a minor deviation** (a detour) from employment (rather than a major one—a frolic), **(Feb 2015)** or
- Ex.: If an employee of a pizza company is supposed to deliver pizza and briefly stops at a nearby post office and hits a pedestrian, the employer will be liable for that tort. (If the employee drove 50 miles out of the way to visit his great aunt and hit a pedestrian, the employer would not be liable as that would be a frolic.)*
- (3) committed an **intentional tort** only if it (mnemonic = **BAN**):
- was for the principal's **benefit**, **(July 2013)**
 - was **authorized** by the principal, or
 - arose **naturally** due to the *nature* of employment.
- ii) The agent/employee is liable, too, under a theory of joint and several liability. If the principal is sued, the principal (employer) may seek **indemnification** (repayment) from the agent (employee).


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Vicarious Liability of Employer/Principal (Respondeat Superior)

The employer is liable in tort if the agent or employee (mnemonic = **SMI**):

- Was acting in the **scope of employment**; 
- Made a **minor deviation** from employment; 

OR

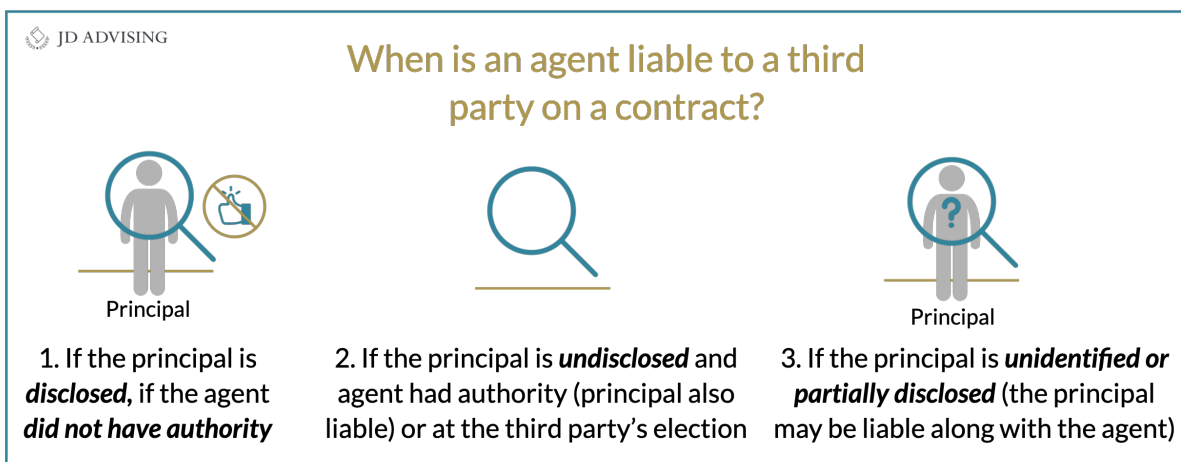
- Committed an **intentional tort** (only if authorized by or for the principal's benefit or one arising naturally from the employment). 

b) **Direct liability of a principal**

- i) The principal is directly liable for his own negligence if he negligently failed to hire/fire/supervise employee(s). **(Feb 2020)**
- 2) Liability of an agent—an agent is liable for his own torts! **(Feb 1999, July 1998)**

IV. Liability of agent on contracts (July 2023, Feb 2022, Feb 2017, Feb 2013, July 2001, Feb 1996)

- 1) If the principal is **disclosed** (that is, the third party knows who the principal is), the agent is *not* liable to the third party if the agent had authority to enter into the contract (but is liable to the third party if she did not have actual or apparent authority and is liable to the principal if she breached her authority). The principal is liable if the agent had actual or apparent authority or if the act was ratified. **(Feb 2020)**
- 2) If the principal is **undisclosed** (the third party does not know he exists), an agent is a party to the contract and is thus liable to the third party at the election of a third party. The principal is not liable if the agent did not have authority to enter into the contract. **(Feb 2022, Feb 2017, Feb 2013, Feb 1996)**
- 3) If the principal is **unidentified** (or **partially disclosed**—that is, the third party knows there is a principal, but just does not know who the principal is), then both the agent and principal may be liable to the third party. **(Feb 2017, Feb 2013)**
 - a) *Ex.: The agent told the third party that he worked for a “well-known” company but did not disclose the name of the company. The principal is unidentified. If the agent exceeded his authority (and had apparent authority to do so), the third party could hold the principal liable under a theory of apparent authority and hold the agent liable because the agent did not fully disclose his agency relationship. (Feb 2013)*



V. Duties owed by an agent

- 1) Duty of care (**July 2003**)
- 2) Duty to obey instructions (**Feb 2006, July 2003**)
- 3) Duty of loyalty (not to engage in self-dealing, taking an opportunity that belongs to the principal, or making a profit without disclosure). The principal may recover losses as well as any profits made by the breaching agent. (**Feb 2016, Feb 2006, July 2003**)



Recommended Agency essays for review

- July 2022, Feb 2017, July 2007 (actual authority; apparent authority; ratification)
- Feb 2022, Feb 2013 (undisclosed principal)
- Feb 2021 (employee vs. independent contractor)
- Feb 2020, Feb 2015 (respondeat superior)
- Feb 2006, July 2003 (fiduciary duties of agents)